

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated: 27.02.2017****CORAM****THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN****CRP(PD)No.3660 of 2013
and
M.P.No.1 of 2013**

P.Arunkumar

.. Petitioner

Vs.

Jayavelu

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order passed in I.A.No.739 of 2013 in O.S.No.170 of 2013 (Transferred Suit O.S.No.492 of 2007 on the file of the Principal District Court, Chengalpattu) dated 04.09.2013, on the file of the Subordinate Judge at Tambaram and prays that the same may be varied, set aside and revised.

For Petitioner : Mr.K.Hariharan

For Respondent : No Appearance

ORDER

The petitioner has filed this Civil Revision Petition to setting aside the order dated 04.09.2013 made in I.A.No.739 of 2013 in O.S.No 170 of 2013, on the file of the Subordinate Court, Tambaram.

2.The case of the revision petitioner is that the respondent herein has filed the suit for specific performance against the revision petitioner in O.S.No 170 of 2013 on the file of the Subordinate Court, Tambaram praying on the strength of an alleged sale agreement dated 10.10.2005. Originally there was no such sale agreement executed by the revision petitioner in favour of the respondent. Hence, in time, he filed written statement and contested for dismissal of the suit. Whereas, due to inadvertence, the written statement was find to be filed by the counsel for the revision petitioner before trial Court, omitting some material particulars and vital facts. Therefore the revision petitioner filed an Interlocutory Application in the above I.A.No.739 of 2013 under Order 8 Rule 9 of CPC praying to receive the Additional Written statement, averring those omitted particulars, so as to substantiate his case. However, the Learned Trial Judge without

proper appreciation of scope of Order 8 Rule 9 of CPC, besides having failed to appreciate the facts involved in the case, has dismissed the revision petitioner's application seeking leave to file additional written statement. The said order of dismissal of revision petitioner's application made in I.A.No.739 of 2013 is impugned herein.

3.I heard Mr.K.Hariharan, learned counsel appearing for the petitioners and there is no representation for the respondent and perused the records.

4.The learned counsel for the revision petitioner contended that inadvertently the earlier counsel of the revision petitioner before the trial Court has omitted to state some material particulars, which would substantiate his case. Those facts are indispensable and vital for the revision petitioner to establish his case. Originally there was no any sale agreement executed by the revision petitioner in favour of the respondent or in favour of any body. Therefore it is just and necessary to allow the revision petitioner's application for leave to file additional written statement. The respondent would not be prejudiced if the application under Order 8 Rule 9 of CPC is allowed, since he would be able to file a reply to the same. However, on a mechanical approach by

the learned trial judge that the averments in the original written statement and in the additional written statement sought to be filed under Order 8 Rule 9 of CPC is one and the same, the revision petitioner's application came to be dismissed erroneously.

5. From the counter affidavit filed by the respondent in I.A.No.739 of 2013, it is noticed by this Court that the prime contentions of the respondent is that the application is made at the belated stage, when the suit was posted for cross examination of the respondent/plaintiff and the same is unsustainable. The same is nothing but a tool to protract the suit proceedings endless. Further all the averments made in additional written statement are untrue and vexatious. The averments in the original written statement and the additional written statement sought to be filed under Order 8 Rule 9 of CPC are one and the same. Hence prayed for dismissal of the revision petitioner's application filed under Order 8 Rule 9 of CPC.

6. On perusal of the typed set of papers and the impugned order, it is seen that the revision petitioner's application came to be dismissed by the Learned Trial Judge holding that since the averments are one and the same, in both the original written statement and in

the additional written statement sought to be filed, there is no justification made by the revision petitioner in filing an application filed under Order 8 Rule 9 of CPC.

7. At this juncture on careful perusal of both original written statement and in the additional written statement sought to be filed, this Court finds that the averments are not one and the same. Whereas, the additional written statement is found to be mentioned with averment with regard to the material particulars of alleged business relationship and monetary transaction between the revision petitioner and the respondent and the subsequent developments therein before filing of the suit.

8. On careful consideration this Court finds that there is neither a new case nor a new plea nor a new defense is brought up by the revision petitioner in the case on hand. Moreover filing of the additional written statement is sought by the revision petitioner, only for denying or clarifying the fact stated in written statement. In this context this Court in the case of ***Damayanthi Kailasam v. Mrs.D.F.Philps and others*** reported in ***2007 (2) CTC 813*** it is held that the Courts should be extremely liberal in granting permission to

receive additional written statement even inconsistent plea could be raised by the defendants in the written statement and additional written statement could be permitted.

9.I have also held in a case in **V.R.Sundararajan v. D.Neelaveni** reported in **2017 (1) MWN (Civil) 694** as follows:

"CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 8, Rule 9 – Additional Written Statement, filing of – Suit for Partition – Defendant pleaded entitlement to property under a Will executed by his father – Trial commenced and two Witnesses were examined – Defendant filed Application to receive Additional Written Statement – Trial Court dismissed Application – Revision filed – Though there is a long delay in filing Additional Written Statement, same can be allowed by payment of Cost to Plaintiff – Revision allowed on condition that Defendant pays Cost to Plaintiff within a week – Trial Court directed to dispose of Suit within two months."

10.In view of the foregoing reasons, considering the above judgments rendered by this Court, the order of the trial Court in

refusing to receive the additional written statement is not proper and the same is liable to be set aside, on condition that the petitioner should pay cost to the respondent/plaintiff.

11. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.739 of 2013 in O.S.No.170 of 2013, dated 04.09.2013, on the file of the learned Subordinate Court, Tambaram;

(b) the petitioner/defendant is permitted to file Additional written statement within a period of two weeks from the date of receipt of a copy of this order;

(c) the respondent/plaintiff is permitted to reply to the Additional written statement within a period of 15 days thereafter;

(d) on filing of the Additional reply to the Additional written statement, the trial Court is directed to dispose of the suit within a period of two months thereafter, without

giving any adjournments to either parties. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2017

Note: Issue order copy on 26.07.2017

Internet: Yes

Index: Yes

vs

To

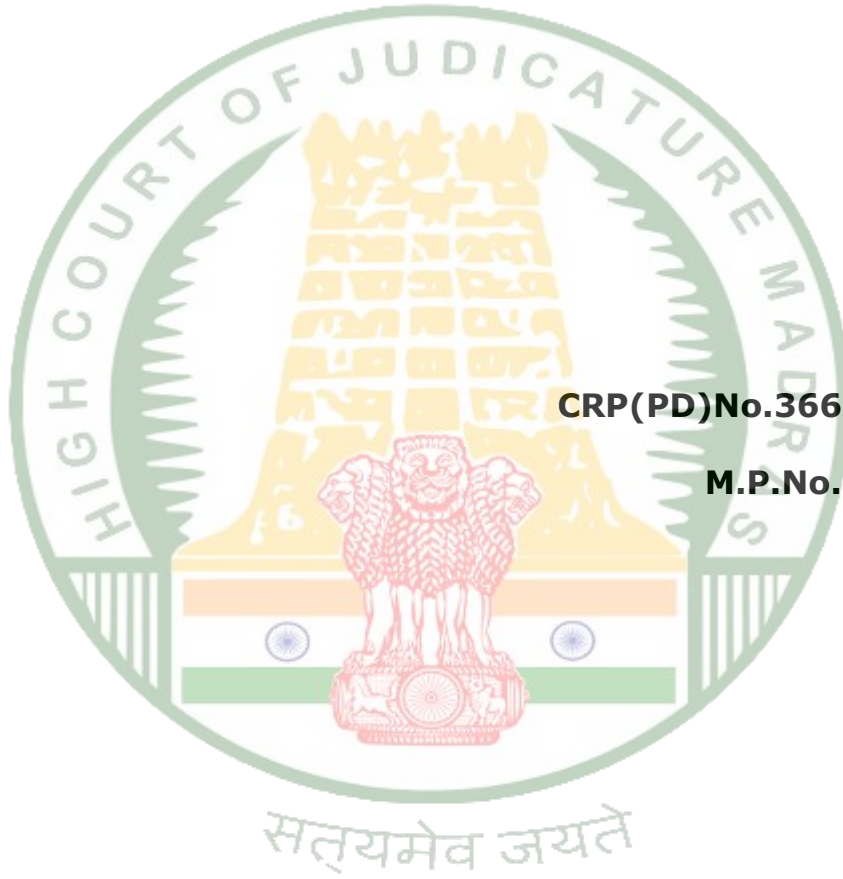
The Subordinate Judge,
Tambaram.



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M.V.MURALIDARAN, J.

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